

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Rodney and Jean Bienfang,**

Petitioners-Appellants,

v.

**Jasper County Board of Review**

Respondent-Appellee.

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**ORDER**

**Docket No. 10-50-0037  
Parcel No. 06.21.300.014**

On April 8, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants Rodney and Jean Bienfang were self-represented. The Jasper County Board of Review designated County Attorney Michael Jacobson as its legal representative. Both parties submitted exhibits in support of their positions. The Appeal Board having reviewed the record and being fully advised, finds:

***Findings of Fact***

Rodney and Jean Bienfang are the owners of a residentially classified, single-family residence located at 2216 W 132nd Street N, Colfax, Iowa. According to the property-record card the property is a two-story home with a one-story, great room addition built in 2004. It has 3432 square feet of total above-grade living area and there is a 900 square-foot basement under the great room addition, which has 560 square feet of finish. There is also a three-car attached garage, a 160 square-foot enclosed porch, and a 144 square-foot open porch. The site is 1.95 acres.

The Bienfang's protested to the Jasper County Board of Review regarding the total 2010 reassessment of \$316,990.<sup>1</sup> This was a change from the 2009 assessment. They asserted the total market value of the subject property was \$220,000, allocated as \$218,000 to the improvements and \$2,000 to the land.

Bienfang's claim was based on the following grounds: 1) that the assessment was not equitable compared with the assessments of other like property under Iowa Code section 441.37(1)(a); 2) that the property was assessed for more than the value authorized by law under section 441.37(1)(b); 3) that the property is misclassified under section 441.37(1)(c); 4) that there is an error in the assessment under section 441.37(1)(d); and 5) that there has been a change downward since the last assessment under sections 441.37(1) and 441.35. The error asserted by the Bienfang's was that the parcel is misclassified and over-assessed. Additionally, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim under Iowa code section 441.37(1)(b). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006) (unpublished).

The Board of Review granted the protest in part, reducing the January 1, 2010, total assessment to \$306,730, allocated as \$32,830 to the land and \$273,870 to the improvements.

The Bienfang's then appealed to this Board reasserting all of their claims, as well as their belief the actual value is \$220,000. Although the Bienfang's appealed on five grounds their testimony and evidence at hearing clearly hinges on two grounds: that the property is over-assessed and misclassified.

The Bienfangs purchased the subject property along with two additional adjoining parcels in October 2007 for \$315,000. The aggregate site purchased included 16.32 acres. One parcel is unimproved; one is improved with some ag buildings; and the third parcel is the subject of this appeal.

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<sup>1</sup> Allocation of the total value to land and improvements was not provided.

The two other parcels adjoining the subject site and part of the transaction are both classified as agricultural.

The Bienfang's submitted an appraisal for mortgage refinancing purposes with an effective date of October 13, 2010. The appraisal was completed by Shauna A. Neal of Neal Appraisal Service, Inc., West Des Moines, Iowa. The appraisal valued only the parcel which is the subject of this appeal.

Neal developed the sales approach and cost approach to value. Neal considered five properties in her sales approach to value, four of which were sales and one active listing. The four sales occurred between March and September 2010, and all are located between seven and twelve miles from the subject property. The sales and list prices ranged from \$240,500 to \$350,000. After making adjustments for differences in the properties, the adjusted range of value was roughly \$235,000 to \$302,000. Neal concluded an opinion of value of \$261,000, based upon the sales comparison approach. Neal did not provide any significant analysis or support for her conclusion of \$261,000, from this rather broad adjusted range of value.

Neal's cost approach concluded a value of \$306,662. The allocation of Neal's cost approach is \$35,500 for land/site improvements and roughly \$271,000, allocated to the depreciated cost of the improvements. We find this cost analysis to be similar to the cost analysis on the property-record card which allocates roughly \$33,000 to the land and \$274,000 to the improvements.

We note, however, many concerns with Neal's appraisal which make us reluctant to rely on it. Neal has conflicting and inconsistent statements and analysis throughout the report. On page 1 she states the subject property "has a more atypical floor plan with a small cellar style basement designed for storm safety." On the same page, and almost immediately following this statement, Neal writes "the subject property conforms well to the market area." We find these statements regarding the property as "atypical" and the "conforming" to be conflicting. Additionally, we note that while Neal references the basement as "a small cellar-style," she indicates the basement as having 930 square feet

in the general description, the sales comparison grid, and the cost analysis. We do not believe a basement area over 900 square feet would typically be classified as a “small-cellar style basement.” Neal also indicates in her appraisal that the subject has no basement finish, yet the property-record card indicates the subject as having 560 square-feet of basement finish. We question the reporting of the basement finish because it appears Neal relied upon the assessor records for the size of the improvements because she does not state she measured it. Yet, she fails to either correctly note the basement finish or reconcile the difference between the public records relied on and her own observations.

We also note that while Neal states the subject is generally conforming to the market (bottom of page 1 in the appraisal), she makes a \$5000 functional utility adjustment in the sales comparison approach and nearly a \$15,000 functional utility adjustment in the cost approach to reflect the subject’s kitchen being on the second floor. We find the comments, as well as the adjustments between the approaches, to be inconsistent for this atypical feature.

Neal concludes a site value of \$35,500 in the cost approach (land value plus site improvements). However, we note her adjustments to the comparable sites for differences in size are not consistent with her conclusion of a \$35,500 site value for the subject property. For instance, comparable two has a site nearly half the size of the subject, yet she makes an upward adjustment of only \$3465 to reflect this difference.

Neal also indicates the subject has a “detached metal building with gravel floor,” for which she assigns a market value of \$3500. Jean Bienfang testified that this building is not actually located on the 1.95 acres which Neal appraised, but rather is located on a neighboring parcel also owned by the Bienfangs.

Lastly, Neal reports the subject property as having an actual age of six years and compares this to properties with actual ages ranging from four to eighty-three years. She makes no adjustments for

age to the oldest property (eighty-three years), yet makes a \$5000 upward age adjustment to a property with an actual age of twenty-eight years. We find her adjustments to be inconsistent and unexplained.

Jasper County Assessor John Deegan testified for the Board of Review. He also critiqued Neal's appraisal, noting that comparables one, two and three are all in better locations, "in town," with public utilities and paved streets. He also questioned if the property located at 2100 W 21st Street N, Newton, (Comparable 1) sold as the result of a foreclosure. We note the multiple listing sheet (MLS) included within Neal's appraisal confirms this property was reported as a foreclosure sale. Because this sale is a foreclosure by statute, it would be considered abnormal under Iowa Code section 441.21 unless adjusted to eliminate the effect of factors which distort market value.

Deegan also critiqued comparable three located at 1118 S 5th Avenue W, Newton. Deegan referred to this property as the "former Maytag mansion" stating it was superior to the subject in location and quality. We note from the pictures in Neal's appraisal this property appears to be significantly superior to the subject property in exterior appeal/construction. This is the only property Neal did not supply an MLS sheet for in her appraisal.

The MLS sheet for Neal's comparable five located at 2025 NE 112th Street indicates this property is being sold "as is" and is in need of "finishing touches." Neal does not address the condition of this property in her report, how this may impact value, or why it would be listed in "as is" condition. While the MLS sheet is vague for this property, it appears suspicious and may also be a some type of distressed sale.

Based on the foregoing concerns with errors in reporting, incomplete analysis, and numerous inconsistencies we do not consider Neal's appraisal as a reliable opinion of value and give it no consideration.

Jean Bienfang claims that the Board of Review stated all three sites were valued as a whole. As a result, Bienfang asserts the subject parcel is being assessed for the entire purchase price. She

offered exhibit two, which is a print-out of a partial property-record card from the Jasper County Assessor's office for "Parcel C of SW SW." This parcel is the larger (roughly 13 acres) of the two adjoining parcels that were part of the Bienfangs 2007 purchase. She notes the print-out references the October 2007 purchase of this parcel as being "\$0.00" yet had a January 1, 2010, assessment of \$8850. She questions why this parcel is shown as having a \$0.00 market value, yet an assessment of \$8850; while the property on appeal has a market value of \$315,000 and was roughly assessed for that value on January 1, 2010, prior to the Board of Review reduction. Bienfang seems to believe the \$0.00 is a reflection of the market value, yet she acknowledged that she did not pay \$0.00 for that parcel. Because the property-record card for the subject of this appeal reflects a sales price of \$315,000 and the assessment is similar although not identical to the sales price, she believes she is being assessed twice, or a "double-dipping" has occurred. She believes this because the assessed value under protest reflects what she paid for all three parcels, yet the other two parcels are also assessed.

We note first that while the sales price of a property in a normal transaction may be an indicator of market value, it does not conclusively establish that value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996). It seems as if Bienfang is making the assumption the sale price of any property is the market value. Secondly, Bienfang incorrectly understands the \$0.00 as a reflection of the sale price for the two adjoining parcels. Deegan testified to this misunderstanding.

Deegan testified it was his belief that at the Board of Review hearing, when Bienfang asserts it told her "that all three sites were valued as a whole," the Board was likely talking about how the sale is recorded on the property record cards and not about the assessment itself. Deegan explained the reason Bienfang notes a "\$0.00" amount of sale for this parcel is because the county does not allocate a portion of the sale to individual parcels when they are purchased under a single transaction. Rather, he believes, if the full property-record card of the adjoining site was researched it would say something along the lines of "multiple parcels" in the sales notes, directing the researcher to all the property cards

involved in that transaction. We note the full record card of Parcel C of SW SW was not presented; but do not find it necessary to resolve this matter as it is not under protest and is not being considered as a comparable site.

The Bienfangs attached a two-page letter to their appeal, outlining the four properties they identified on their protest form as demonstrating they were inequitably assessed. We note two of the four properties have an agricultural classification compared to the subject's residential classification, as such they cannot be considered comparable for equity purposes. The two remaining properties are residentially classified. At hearing, it was unclear to us if the Bienfangs intended these properties to demonstrate inequity or market value. The Bienfangs testified they relied on these four sales to come to their conclusion of a market value of \$220,000 for their property. The Bienfangs provided a print-out from the Jasper County Assessor's web-site for each of the four properties. This print-out is not a complete property-record card, but provides basic information about each property, its assessment, and sales information. Bienfang's letter comparing these properties to their own property identifies the 2009 assessment for each. However, at hearing it was noted that the assessments reported and compared to the sale prices of the comparables are actually the 2010 assessments. Information about the four sales is summarized in Figure 1 below. The first property noted is the subject.

**Figure 1.**

	Address	Classification	Site Size (Acres)	Sale Date	Sale Price	Style	Gross Living Area (GLA)	Year Built	Outbuildings
S	2216 W 132nd St N	Residential	1.95	N/A	N/A	2 Sty	3432	2004	None
1	11018 S 44 Ave W	Agricultural	9.4	7/22/2009	\$220,000	1 Sty	1664	1980	4
2	12080 N 19 Ave W	Agricultural	29.79	4/21/2009	\$307,000	1 Sty	2016	2005	4
3	13343 Hwy F-34 W	Residential	9.08	9/20/2008	\$265,000	Split Foyer	1248	1974	None
4	13102 N 19 Ave W	Residential	9.03	N/A	N/A	1 Sty	2044	1999	None

Comparable one is located at 11018 S 44 Ave W and sold in July 2009 for \$220,000. The property had a 2010 assessment of \$183,090. The property is 9.4 acres and classified as agricultural

compared to the subjects site of 1.95 acres and being residentially classified. Because they carry different classifications, the assessments can not be compared. Comparable one is improved with a one-story frame, with 1664 square feet of total above grade living area (GLA), and built in 1980. This property also has several outbuildings. The subject, however, has a two-story design, 3432 square feet of GLA, and while the original part of the house is estimated to be 100 years old it has been extensively remodeled with additions in 2004. There are no outbuildings on the subject's 1.95 parcel. The Bienfangs intended this sale to be a market value comparable, but, we do not find the style, size, age of the improvements, or amenities to be reasonably similar to the subject.

Comparable two is located at 12080 N 19 Ave W and also has an agricultural classification, making the assessments incomparable to the subject. This property sold in April 2009 for \$307,000, but has 29.79 acres compared to the subject's 1.95 acre site. The improvements consist of a one-story home, built in 2005, with 2016 square feet of GLA, as well as several outbuildings. While this property is a newer home, we do not find its style and size to be reasonably comparable to the subject.

Comparable three is located at 13343 Highway F-34 W and is a residentially classified property on a 9.08 acre site. This home sold in September 2008 for \$265,000. The improvements consist of a split-foyer style home with 1248 square feet of GLA, and built in 1974. Given the style, age, and size of the improvements, as well as a sale date of 2008, we do not consider this a comparable to the subject property.

Comparable four is located at 13102 N 19 Ave W, but has not sold in the last ten years. Like the other three properties, we do not find the improvements to similar to the subject property. Further, because it is not a sale it can not be analyzed as a market value comparison.

Deegan testified that the assessment is based on a market and cost "blend." He stated that the Bienfang's assessment is based primarily on the cost approach; however, as sales occur he stated they are compared to, what we believe, would be his cost approach. When questioned if he considered any



market sales Deegan indicated he considered some sales that he believed were more comparable because they were within three miles of the subject. While we believe location is an important factor to consider, we do not consider its location as the sole indicator of comparison. In a rural setting, we recognize it may be necessary to extend search parameters resulting in comparables that may be many miles from a subject property.

Deegan provided the Declaration of Value (DOV) and property record card for two sales he considered as comparable primarily due to location. The first property offered by Deegan was located at 11796 N 4 Ave W, and sold for \$285,000 in March 2010. This sale has a 9.78 acre site and is improved with a one-story home built in 2000, having 1890 square feet of GLA. It also has a 1200 square-foot metal pole building which was built in 2004. This sale also has a walk-out basement with 1400 square feet of living-quality finish and a 696 square-foot wrap around deck. Deegan did not make any adjustments to this property in comparison to the subject.

The second sale offered by Deegan was located at 12759 N 47 Ave W. It has 7.06 acres and sold in July 2010 for \$255,800. This property is improved with a one-story home built in 1957 and having 1560 square feet of GLA, a 536 square-foot deck, a 136 square-foot patio, and a detached garage. Again, Deegan did not offer any adjusted comparison analysis.

Similar to the Bienfang's comparables, we find that the style, size, age, and amenities of these properties are not very similar to the subject property. Additionally, they are without adjustments for their differences.

The Bienfangs also assert their property is misclassified as residential and should instead be classified agricultural. They assert the subject parcel is used in conjunction with the two adjoining sites for agricultural purposes.

Jean Bienfang testified they board horses on a seasonal basis, providing water, feed, pasture, and cleanup. She indicated they board race horses prior to the start and at the end of the race season.

The horses arrive at the property in roughly March or April as they get ready for the racing season.

When the season starts the horses are either at the track or periodically at the Bienfang property. The horses are again boarded at the Bienfang property in the fall for a short period of time before they head back “south” for the winter. Jean testified that the boarding has limited income, “just enough to cover feed.” The Bienfangs supplied their 2009 Schedule F. It shows a loss.

Additionally, they have two community gardens and “a few” chickens. While the gardens and chickens are raised on the Bienfang’s properties they are cultivated and maintained by four or five families in their church. The food from the gardens and eggs from the chickens are not sold, but rather are used by the families. The Bienfangs testified that the activity was not for profit, but rather to practice and teach stewardship. As such, we do not find the Bienfangs have demonstrated an intent to profit from their ag activity.

Based on the foregoing, we find insufficient evidence has been provided to demonstrate the subject over-assessed or misclassified.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hly-vee, Inc. v. Employment*

*Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Bienfangs provided an appraisal with an effective date of October 2010 in support of their market value claim. However, we find numerous inconsistencies, errors, and a lack of analysis with the report and therefore give it no consideration. The Bienfangs also provided four properties they considered as comparable in support of their market value claim. We do not find these properties comparable for a variety of reasons previously identified. The support for their market value claim falls short.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the basis of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. r. 701-71.1(1).

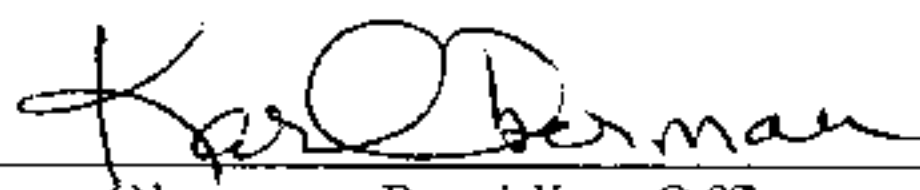
“Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes” except buildings which are primarily used or intended for human habitation. *Id.* r. 701-71.1(3). “Land . . . shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or

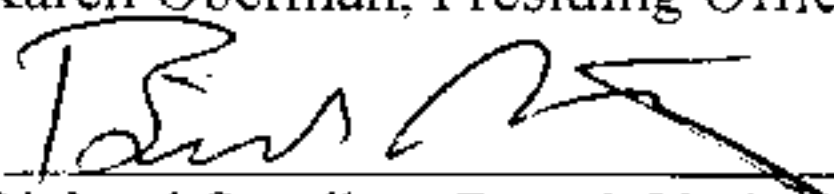
horticulture, all for intended profit.” *Id.* With respect to residential real estate, these regulations provide that this includes land and buildings primarily used or intended for human habitation, including those buildings located on agricultural land. *Id.* r. 701-71.1(4). The Bienfangs claimed their property was used in conjunction with adjoining sites for agricultural activity. However, by the Bienfangs own testimony the gardening/horticulture is primarily for personal use and not with intent to profit from that activity. Further, though the Bienfangs board horses on the property, they do so on a very intermittent basis. They testified they only make enough to cover the cost of feed. For these reasons we do not believe they have demonstrated an intent to profit from this activity as required by the rule.

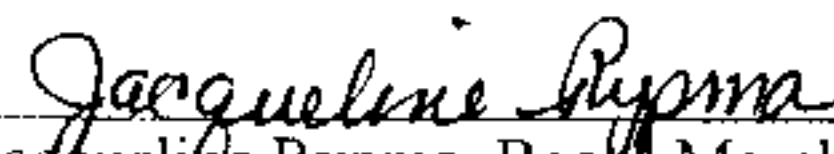
Viewing the evidence as a whole, we determine the preponderance of evidence was lacking to support Bienfang’s claims. Therefore, we affirm the Bienfang’s property assessment as determined by the Jasper County Board of Review.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Jasper County Board of Review is affirmed.

Dated this 27 day of May 2011.

  
Karen Oberman, Presiding Officer

  
Richard Stradley, Board Chair

  
Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>J-37</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	